

(b) Public utilities owned and operated by a political subdivision of the state and none of whose utilities is in competition with any other utility, are exempt from the provisions of this chapter, other than the provisions of AS 42.05.221 — 42.05.281, unless the owner and operator elects to be subject to all provisions of this chapter.

(c) The ownership in whole or part, of the corporate stock of a public utility does not make the owner a public utility.

(d) The commission, on a finding that no legitimate public interest will be served, may exempt a utility from all or any portion of this chapter.

(e) Notwithstanding any other provisions of this chapter, any electric or telephone utility that does not gross \$50,000 annually is exempt from regulation under this chapter unless 25 percent of the subscribers petition the commission for regulation.

(f) Notwithstanding any other provisions of this chapter, an electric or telephone utility that does not gross \$325,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(g) A utility, other than a telephone or electric utility, that does not gross \$100,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281 under the procedure described in AS 42.05.712.

(h) A cooperative organized under AS 10.25 may elect to be exempt from the provisions of this chapter, other than AS 42.05.221 — 42.05.281, under the procedure described in AS 42.05.712.

(i) A utility which furnishes collection and disposal service of garbage, refuse, trash, or other waste material and has annual gross revenues of \$200,000 or less is exempt from the provisions of this chapter, other than the certification provisions of AS 42.05.221 — 42.05.281, unless 25 percent of the subscribers or subscribers representing 25 percent of the gross revenue of the utility petition the commission for regulation.

(j) The provisions of this chapter do not apply to sales, exchanges or gifts of energy to an electric utility certificated under this chapter when the energy which is the subject of the sale, exchange or gift is waste heat, electricity, or other energy which is surplus or the by-product of an industrial process. In an area in which no electric utility is certificated for service, energy provided by sale, exchange or gift may be provided to any utility which is certificated for service to that area. A contract for the sale, exchange or gift of energy exempt under this subsection does not make the supplier a public utility, and does not transfer the responsibility to provide utility services from a certificated utility to any other person.

(k) A utility which furnishes cable television service is exempt from the provisions of this chapter other than AS 42.05.221 — 42.05.281 unless 25 percent of the subscribers petition the commission for regulation.

(l) A person, utility, or cooperative that is exempt from regulation under AS 42.05.711(a) or (d) — (k) is not subject to regulation by a municipality under AS 29.48.060 — 29.48.090, (§ 6 ch 113 SLA 1970; am § 3 ch 76 SLA 1973; am § 8 ch 83 SLA 1980; am §§ 7-9 ch 136 SLA 1980; am § 89 ch 59 SLA 1982; am § 1 ch 30 SLA 1983)

Cross references. — For limitations on these exemptions, see AS 42.05.321(b) and AS 42.05.381(c).

Effect of amendments. — The first 1980 amendment added subsection (j).

The second 1980 amendment deleted "excepting the furnishing of collection and disposal service of garbage, refuse, trash or other waste material" following "none of whose utilities" near the beginning of subsection (b), deleted the former second sentence in subsection (b), which read: "Notwithstanding any other provisions of this chapter, municipalities providing collection and disposal service of garbage, refuse, trash or other waste material within their corporate boundaries are not subject to regulation by the Alaska Public Utilities Commission unless the municipality elects to be subject to the provisions of this chapter," substituted "\$50,000" for "\$25,000" following "does not gross" near the middle of subsection (e), substituted

"under this chapter" for "hereunder" following "exempt from regulation" near the middle of subsection (e), and added subsections (f) through (i).

The 1982 amendment, effective May 28, 1982, deleted "on June 30, 1980" preceding "a utility," and inserted "annual" preceding "gross revenue" in subsection (i).

The 1983 amendment added subsections (k) and (l).

Opinions of attorney general. — An electrical utility owned and operated by a regional electrical authority would continue to qualify for the broad exemption from this chapter, available to political subdivisions under subsection (b) of this section once the regional electrical authority had completed its proposed organization as a nonprofit corporation pursuant to AS 10.20.005 et seq. June 7, 1976, Op. Att'y Gen.

NOTES TO DECISIONS

Municipally owned utilities in competition with other utilities subjected to full gamut of regulation pertaining to other utilities, with exception

relating to bond covenants. — See Alaska Pub. Utils. Comm'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

Sec. 42.05.712. Deregulation ballot. (a) A utility or cooperative which may elect to be exempt from the provisions of this chapter shall poll its subscribers or members in the manner described in this section.

(b) The votes of a majority of those voting in an election in which at least 15 percent of the eligible subscribers or members return ballots are required for a utility or cooperative to elect exemption under (a) of this section.

(c) Each subscriber or member of the utility or cooperative shall receive notice of an election under this section with the subscriber's or member's regular bill for service at least 60 days before the date set for the election. The notice shall contain impartial language informing the subscribers or members that an election on the option of deregulation or regulation by the Alaska Public Utilities Commission will be held within 60 days and that a ballot to participate in that election will be mailed or delivered to each subscriber or member of the utility or cooperative with the regular bill for service. The notice shall also state

that a subscriber or member of the cooperative is entitled to vote in the election without regard to whether the subscriber's or member's account with the utility or cooperative is current and that the ballot must be postmarked or returned to the commission within 30 days after it was mailed or otherwise delivered to the subscriber or member. The notice shall also announce the schedule for one or more public meetings which shall provide an opportunity for the subscribers or members to discuss this election. The public meeting or meetings shall be held not more than 30 days before the ballots are mailed or distributed to those eligible to vote. A cooperative may satisfy this requirement by including a discussion of this election on the agenda of an annual meeting if the annual meeting is scheduled to be held not more than 30 days before the election.

(d) A ballot with return postage paid shall be mailed or delivered to each subscriber or member of the utility or cooperative with the subscriber's or member's bill for service and shall contain only the following language:

"Shall (name of utility or cooperative) be exempt from regulation by the Alaska Public Utilities Commission?

[] YES [] NO"

(e) The results of an election under this section shall be certified by the commission within 60 days after the ballots are mailed or delivered to the subscribers or members.

(f) During the 60 days immediately preceding an election under this section a list of subscribers or members of the utility or cooperative shall be made available at cost to any subscriber or member of the utility or cooperative who requests one. The list shall be in the same form that is available to the utility or cooperative.

(g) The board of directors of a utility or cooperative may call an election under this section on its own initiative and shall call an election upon receipt of a valid petition from its subscribers or members. A petition shall be considered valid if it is signed by not less than the number of subscribers or members equal to ten percent of the first 5,000 subscribers or members and three percent of the subscribers or members in excess of 5,000. An election under this section may only be held once every two years.

(h) A utility or cooperative which is already exempt from regulation under this section may elect to terminate its exemption in the same manner. (§ 10 ch 136 SLA 1980)

Sec. 42.05.720. Definitions. In this chapter

(1) "affiliated interest" includes:

(A) a person owning or holding directly or indirectly five per cent or more of the voting securities of a public utility engaged in intrastate business in this state;

(B) a person, other than those specified in (A) of this paragraph, in a chain of successive ownership of five per cent or more of voting

securities, the chain beginning with the holder of the voting securities of such public utility;

(C) a corporation five per cent or more of whose voting securities are owned by a person owning five per cent or more of the voting securities of the public utility or by a person in such a chain of successive ownership of five per cent or more of voting securities;

(D) a corporation five per cent or more of whose voting securities are owned or held by a public utility;

(E) a person with whom the public utility has a management or service contract;

(F) a person who is an officer or director of such a public utility or of a corporation in a chain of successive ownership of five per cent or more of voting securities;

(G) a corporation which has one or more officers or directors in common with a public utility;

(H) a person or corporation who or which the commission determines as a matter of fact, after investigation and hearing, actually is exercising such substantial influence over the policies and actions of a utility in conjunction with one or more other corporations or persons with whom they are related by ownership or blood, or by action in concert, that together they are affiliated with the utility within the meaning of this section even though none of them alone is so affiliated; or

(I) a person or corporation who or which the commission determines as a matter of fact after investigation and hearing actually is exercising substantial influence over the policies and actions of a utility even though such influence is not based upon stockholdings, stockholders, officers or directors to the extent specified in this section;

(2) "commission" means the Alaska Public Utilities Commission;

(3) "public" or "general public" means

(A) any group of 10 or more customers that purchase the service or commodity furnished by a public utility as defined in (2) of this section; and

(B) any utility purchasing the product or service or paying for the transmission of electric energy, natural or manufactured gas, or petroleum products which are re-sold to a group included in (A) of this paragraph or which are used to produce the service or commodity sold to the public by the utility;

(4) "public utility" or "utility" includes every corporation (whether public, cooperative, or otherwise), company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages or controls any plant, pipeline or system for

(A) furnishing, by generation, transmission or distribution, electrical service to the public for compensation;

(B) furnishing telecommunications service to the public for compensation;

(C) furnishing water, steam or sewer service to the public for compensation;

(D) furnishing by transmission or distribution of natural or manufactured gas to the Alaska public for compensation;

(E) furnishing for distribution or by distribution petroleum or petroleum products to the Alaska public for compensation when the consumer has no alternative in the choice of supplier of a comparable product and service at an equal or lesser price;

(F) furnishing collection and disposal service of garbage, refuse, trash or other waste material;

(5) "rate" includes each rate, toll, fare, rental, charge, or other form of compensation demanded, observed, charged or collected by a public utility for its services;

(6) "service" means (unless the context indicates otherwise) every commodity, product, use, facility, convenience or other form of service which is offered for and provided by a public utility for the convenience and necessity of the public;

(7) "tariff" means a rate, charge, toll, rule or regulation of a utility relating to services furnished by the utility to the general public for compensation and every map, page, adoption notice, instrument or other document filed with the commission setting out the terms and conditions under which utility services are offered to the public and instruments of concurrence and all other documents and data setting out the terms of a utility's business relations with another utility insofar as they affect the general public either directly or indirectly;

(8) "telecommunications" means the transmission and reception of messages, impressions, pictures and signals by means of electricity, electromagnetic waves and any other kind of energy, force variations or impulses whether conveyed by cable, wire, radiated through space, or transmitted through other media within a specified area or between designated points. (§ 6 ch 113 SLA 1970; am § 2 ch 36 SLA 1971; am § 2 ch 76 SLA 1973)

Revisor's notes. Formerly AS 42.05.701. Renumbered in 1983 and reorganized to alphabetize the defined terms.

Cross references. - For legislative purpose of paragraph (4)(E) of this section, see § 1, ch 36, SLA 1971 in the Temporary and Special Acts.

NOTES TO DECISIONS

Applied in *McClellan v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977); *Alaska Pub. Utils. Comm'n v. Chugach Elec. Ass'n*, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687

(1978), overruled on other grounds, Sup. Ct. Op. No. (File No. 3636), 595 P.2d 626 (1979); *B-C Cable Co. v. City of Juneau*, Sup. Ct. Op. No. 2112 (File No. 4587), 613 P.2d 616 (1980).

§ 42.05.721

PUBLIC UTILITIES AND CARRIERS

§ 42.06.130

Collateral references. — 64 Am. Jur. 2d, Public Utilities, §§ 1 — 2.

73 C.J.S., Public Utilities, §§ 1 — 3.

What are "public utilities" within provisions relating to municipal purchase, construction or repair of public utility, 9 ALR 1033; 35 ALR 592.

Conclusiveness of charter as regards character of corporation as a public utility corporation, 119 ALR 1019.

Electricity, gas, or water furnished by public utility as "goods" within provisions of Uniform Commercial Code Article 2 on Sales, 48 ALR3d 1060

Sec. 42.05.721. Short title. This chapter may be cited as the Alaska Public Utilities Commission Act. (§ 6 ch 113 SLA 1970)

Cross references. — For transition provisions, see § 7, ch. 113, SLA 1970 in the Temporary and Special Acts.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

May 15, 1985

IN REPLY REFER TO:

State of Alaska
Alaska Public Utilities Commission
Department of Commerce and Economic Development
Anchorage, Alaska 99501
Attn: Carolyn S. Guess, Chairman

Gentlemen:

The Commission is again updating its list of states which have certified that they regulate pole attachment rates, terms, and conditions to insure that all certifications comply with amended Section 1.1414 of the Commission's Rules, 47 C.F.R. §1.1414. That Section was recently amended to implement certain provisions of the Cable Communications Policy Act of 1984. Report and Order in MM Docket No. 84-1296, FCC 85-179 (released April 19, 1985). Among the amendments is new Section 1.1414(a)(3), 47 C.F.R. §1.1414(a)(3), which provides that a state regulating pole attachments must certify to this Commission that

It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state)

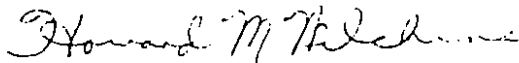
With the exception of a statement about methodology, your certification already includes all of the required information. Accordingly, if your state's rules and regulations include a specific methodology which has been made publicly available in the state, please so certify to the Commission by May 30, 1985.

Receipt of such information by May 30, 1985, will permit the Commission to retain your state on our certification list. Therefore, your prompt attention and cooperation are appreciated.

Please address your certification and any inquiries to:

Federal Communications Commission
Attention: Margaret Wood, Esq.
Room 6206
1919 M Street, N.W.
Washington, D.C. 20554
Telephone (202) 632-4890

Sincerely,



Howard M. Wilchins
Deputy Chief, Enforcement Division

Enclosure

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

August 9, 1985

IN REPLY REFER TO:

Carolyn S. Guess, Chairman
Alaska Public Utilities Commission
420 "L" Street
Suite 100
Anchorage, Alaska 99501

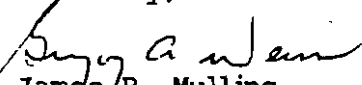
Re: Certification of Pole Attachment
Jurisdiction by the Alaska Public
Service Commission

Dear Chairman Guess:

In our letter of May 15, 1985, the Commission notified you that it was updating its list of states that have asserted jurisdiction over the rates, terms, and conditions of pole attachments. We informed you that your previous certification includes all of the required information pursuant to Section 1.1414 of the Rules, 47 C.F.R. §1.1414, except for a statement that Alaska "has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state."

To date we have not received this certification. Accordingly, Alaska will not be included on our next list of states asserting pole attachment jurisdiction. If, indeed, your rules and regulations include a specific methodology which has been made publicly available in Alaska, or if you adopt such a methodology in the future, please notify the Commission so that we may revise our list to include Alaska.

Sincerely,

for 
James B. Mullins
Chief, Enforcement Division
Common Carrier Bureau

ORDER ADOPTING REGULATIONS
OF THE
ALASKA PUBLIC UTILITIES COMMISSION

The attached 3 pages of regulations, dealing with the joint use of electric and telephone facilities by cable television utilities, are hereby adopted and certified to be correct copies of the regulations that the Alaska Public Utilities Commission adopts under authority vested by AS 42.05.151(a) and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

This order takes effect on the 30th day after it has been filed by the lieutenant governor as provided in AS 44.62.180.

DATE: November 2, 1987
Anchorage, Alaska

Susan M. Knowles
Susan M. Knowles
Commissioner

Louis E. Agi
Louis E. Agi
Commissioner

Peter Sokolov
Peter Sokolov
Commissioner

Hugh Malone FOR FILING CERTIFICATION
I, STEPHEN McALPINE, Lieutenant Governor for the State of Alaska, certify that on April 8, 1988, at 4:40 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 -- 44.62.120.

for Hugh Malone
Lieutenant Governor

Effective: May 8, 1988

REGISTER: 106, July 1988

10/10/87

STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners: Carolyn S. Guess, Acting Chairman
Susan M. Knowles
Louis E. Agi
Kathleen L. Whiteaker
Peter Sokolov

In the Matter of the Adoption of)
Regulations Relating to Joint Use) R-85-2*
of Electric and Telephone Utility)
Poles and Conduits by Cable Tele-) ORDER NO. 3
vision Utilities)

ORDER ADOPTING REGULATIONS

BY THE COMMISSION:

Introduction

On May 8, 1987, the Commission issued Order No. 2 in this proceeding proposing regulations regarding the joint use of electric and telephone facilities by cable television (CATV) utilities.¹ On May 9, 1987, the revised proposed regulations were noticed to the public with a closing date of June 30, 1987, for submission of written comments.

In response to Order No. 2 and the second public notice, written comments were filed by the Municipality of Anchorage d/b/a Anchorage Telephone Utility; Homer Electric Association, Inc.; the City and Borough of Sitka; Telephone Utilities of the Northland, Inc./Telephone Utilities of Alaska, Inc.; and the City and Borough of Wrangell.

*Department of Law File No. 99-3-86-0026

¹The proposed regulations (3 AAC 52.900 -- 3 AAC 52.940) incorporated renumbering changes and other revisions to the originally proposed regulations appended to Order No. 1. Due to the passage of time since original notice of the proposed regulations in this proceeding, the Commission established an additional 30-day comment period stating that previous respondents would be at liberty to adopt earlier comments or submit new or supplemental comments as deemed desirable.

108/98

1 The Commission Staff (Staff) has reviewed the comments
2 and submitted its recommendation, which is attached to this Or-
3 der as Appendix A. Staff stated that based on its review of the
4 revised proposed regulations and additional comments, it has
5 concluded that the regulations attached to Order No. 2 of this
6 proceeding were reasonable and should be adopted as proposed.

7 At the Commission's Open Meeting of September 18, 1987,
8 the proposed regulations and Staff's recommendation were dis-
9 cussed. The Commission determined that the regulations should
10 be adopted with certain revisions which will be discussed below.

11 Discussion

12 First, the Commission has considered whether all
13 references to "conduits" should be deleted from the proposed
14 regulations because application of the joint use compensation
15 methodology to conduits was not fully developed and, in any
16 event, would extend beyond the scope of regulations promulgated
17 by the Federal Communications Commission (FCC) §§1.1401 --
18 1.1415 (1985).² There is, moreover, a possibility that reten-
19 tion of conduit references in the regulations might constitute
20 an obligation to permit conduit usage where it would be other-
21 wise inappropriate in view of special problems associated with
22 joint conduit occupancy. For these reasons, therefore, the Com-
23 mission was and is of the opinion that the regulations developed
24 in this proceeding should delete all references to "conduits."

25 Second, the Commission has considered deletion of the
26 second sentence in 3 AAC 52.900(b), which provides that:

28 ²As stated in Order No. 1 (pp. 3-4), the Commission devel-
29 oped proposed regulations, including a compensation methodology,
30 to comply with an FCC mandate: "Effective April 28, 1985, the
31 FCC, pursuant to the Cable Communications Policy Act of 1984,
32 also requires a state regulating pole attachments to issue reg-
ulations implementing the state's regulatory authority over pole
attachments, including a specific methodology for such regula-
tion which has been made publicly available in the state."

1 "[e]lectric, telephone, and CATV utilities are encouraged to
2 contract for joint use." This sentence appears to have the
3 paradoxical capability of being viewed as either an enlargement
4 or diminution of rights and duties under AS 42.05.311 and
5 42.05.321 or, at best, being merely redundant to the statute.
6 None of these purposes were either intended or proper, and the
7 uncertainty and undesirability of their being present outweighs
8 any marginal precatory value that might be achieved through the
9 sentence's retention. Accordingly, it was and is the Commis-
10 sion's opinion that the phrase should be deleted.

11 Finally, to avoid perceived imprecision in language
12 attempting to accommodate those utilities which utilize an ac-
13 counting system comparable to the Uniform System of Accounts,
14 the Commission will replace the phrase "comparable to that"
15 appearing in the body of each statement of proposed 3 AAC 52.-
16 940(1), (3) and (4)³ with the following phrase at the end of
17 each such statement: "or in a comparable accounting system if
18 in use by the particular electric or telephone utility."

19 Appendix B contains the regulations as finally adopted
20 by the Commission. Appendix C contains a draft version of the
21 proposed regulations, showing the deletions and additions made
22 to arrive at the Appendix B version.⁴

23
24
25 ³Proposed 3 AAC 52.940(2), a definition of "gross conduit
26 investment," has been deleted consistent with the Commission's
27 decision to remove all references to "conduits" as discussed
28 above. To reflect the deletion of this definition, the proposed
29 subsections 3 AAC 52.940(3) and (4) referred to in the text have
30 been renumbered and will appear in the regulations finally
31 adopted as 3 AAC 52.940(2) and (3). The remaining subsections
32 in 3 AAC 52.940 have also been appropriately renumbered.

33
34
35 ⁴The Commission has also, at request of the Assistant
36 Attorney General assigned to the Commission, made several non-
37 substantive changes in the regulations for conformance with the
38 Department of Law's guidelines in its Drafting Manual for Ad-
39 ministrative Regulations (July 1985, 9th Edition). All changes
40 not explained in the body of this Order are such changes re-
41 quired by the Department of Law.

1 Before the regulations appended to this Order can be
2 made effective, they must be reviewed again by the Attorney
3 General's office and then forwarded to the office of the Lieu-
4 tenant Governor. The regulations then will become effective
5 30 days after they have been accepted for filing by the Lieuten-
6 ant Governor's office. The Commission anticipates that the ef-
7 fective date of the regulations adopted herein will be at least
8 six weeks after issuance of this Order.

9 ORDER

10 THE COMMISSION FURTHER ORDERS, That, the regulations
11 appended hereto as Appendix B are adopted for the reasons ar-
12 ticulated in the body of this Order.

13 DATED AND EFFECTIVE at Anchorage, Alaska this 30th day of Oc-
14 tober, 1987.

15 BY DIRECTION OF THE COMMISSION
16 (Commissioners Carolyn S. Guess, Acting Chairman, and
17 Kathleen L. Whiteaker, not participating)

18
19 (S E A L)



STATE OF ALASKA
LIEUTENANT GOVERNOR
JUNEAU

CERTIFICATE

DELEGATION OF LIEUTENANT GOVERNOR'S AUTHORITY

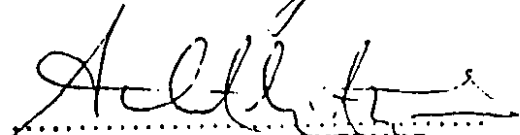
I, STEPHEN McALPINE, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, as authorized by AS 44.19.026, designate Hugh Malone, Commissioner of the Department of Revenue, as temporary custodian of the state seal and as the officer to perform the Administrative Procedure Act filing functions and the authenticating functions of the Lieutenant Governor during such time as I succeed to the Office of Governor, act as Governor, am absent from the state, or am otherwise unavailable at the state capital to perform these functions.

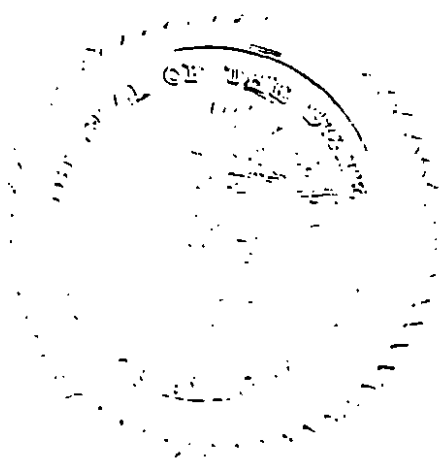
In the absence of Commissioner Malone, I designate Jim Sampson, Commissioner of the Department of Labor, to perform the functions stated above.

In the absence of Commissioner Sampson, I designate Tony Smith, Commissioner of the Department of Commerce and Economic Development to perform the functions stated above.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed hereto the Seal of the State of Alaska, at Juneau, the Capital,

This second day of February,
A.D. 1987.....


LIEUTENANT GOVERNOR



M E M O R A N D U M

To: Carolyn Guess, Acting Chairman Date: September 14, 1987
From: William Marshall, Utilities Engineer IV *WEM*
Subject: Docket R-85-2, adoption of regulations relating to
joint use of electric and telephone utility poles by cable
television utilities.

Recommendation

Staff has reviewed the proposed regulations and the responses to the notice and believes that the regulations attached to Order No. 2 of this proceeding should be adopted as proposed.

Discussion

On October 23, 1985, the Commission issued R-85-2(1) which initiated a proceeding to consider proposed regulations regarding the joint use of electric and telephone facilities by CATV utilities. A copy of the proposed regulations were attached to that Order setting forth a specific methodology to determine joint use rates.

Simultaneously on October 23, 1985, the Commission noticed the proposed adoption of regulations to the public. The notice had a closing date of December 13, 1985, for the filing of comments in opposition to, or in support of, the proposed regulations. Comments were received from the Municipality of Anchorage d/b/a Anchorage Telephone Utility/Municipal Light and Power, Chugach Electric Association, Inc., United Utilities, Inc., UniVista, Inc., Manley Utility Company, the City and Borough of Sitka, Matanuska Electric Association, Inc., the City of Ketchikan d/b/a Ketchikan Public Utilities, and Homer Electric Association, Inc.

The Commission met in open session on June 6, 1986, to discuss the proposed regulations and comments. A summary of the comments and discussion is contained in Attachment 1.

Subsequent to the open meeting, the Commission issued a revised copy of the proposed regulations which included renumbering and changes to 3 AAC 52.920(c) and 3 AAC 52.940(1)-(4) (R-85-2(2)). The revised regulations were noticed to the public with a closing date of June 30, 1987, for filing comments on, or suggested revisions to, the proposed regulations. In Order No. 2, the Commission stated that previous respondents will be at liberty to adopt earlier comments or submit new or supplemental comments as deemed desirable.

Responses were received from the Municipality of Anchorage d/b/a Anchorage Telephone Utility; the City and Borough of Sitka; the City and Borough of Wrangell; Telephone Utilities, Inc.;

Telephone Utilities of the Northland, Inc.; Telephone Utilities of Alaska, Inc.; and Homer Electric Association, Inc.

Homer Electric Association, Inc. and the City and Borough of Sitka adopted their earlier comments. A summary of those comments and the discussion of the comments is contained in Attachment 1.

The City and Borough of Wrangell's response supported the comments of the City and Borough of Sitka; i.e., that the proposed regulations should not apply to an exempt utility.

Telephone Utilities, Inc. (TUI); Telephone Utilities of the Northland, Inc.; and Telephone Utilities of Alaska, Inc., jointly filed comments advocating that (1) one joint use agreement must be negotiated between all parties who will be making attachments to the poles versus separate agreements between the various attaching parties, (2) in determining the pole attachment rate, one half of the 40-inch clearance space between power lines and communication lines should be assigned to communications, (3) the original cost of changing out a pole to meet clearance requirements for communications cable should be borne by both telephone and cable television utilities.

With regard to Item 1 above, Staff believes the purpose of the proposed regulations is to establish a method for reasonable compensation for joint use where a CATV and another utility fail to agree on compensation for joint use of the other utilities poles and conduits. Therefore, Staff sees no reason to revise the regulations in this instance as proposed by TUI.

Item 2 of TUI's comments proposes that a portion of 40 inch clearance requirement should be assigned to communications utilities occupied space for determining attachment rates. Staff notes that Section 238 of the NESC allows utilities to use this space under certain circumstances. Electric utilities have used a portion of the area in attaching luminaire brackets for street lighting. Table 238-1 of the NESC states that where noncurrent carrying parts of equipment are effectively grounded consistently through well-defined areas and where communication is at lower levels, clearances may be reduced to 30 inches. In addition, Table 238-2 provides that the clearance between effectively grounded brackets carrying the luminaires shall be at least 4 inches above messengers carrying communications cables. Since the electric utilities are able to utilize the area, Staff believes that it is not appropriate to assign the 40 inches as part of the CATV's or telephone utility's occupied space.

Item 3 of TUI's comments is addressed by AS 42.05.311, which states that the cost of modifications or additions necessary to accommodate the joint use shall be at the expense of the public utility requesting the use of the facility.

The Municipality of Anchorage d/b/a Anchorage Telephone Utility (ATU) adopted its earlier comments and also supplemented those comments. The earlier comments are summarized and discussed in

SUMMARY OF THE COMMENTS FILED IN RESPONSE TO THE OCTOBER 23, 1985
NOTICING OF PROPOSED REGULATIONS AND THE COMMISSION'S DISCUSSION
AND TENTATIVE FINDING MADE AT THE OPEN MEETING HELD JUNE 6, 1986

MUNICIPALITY OF ANCHORAGE (MOA) d/b/a ANCHORAGE TELEPHONE UTILITY
AND d/b/a MUNICIPALITY LIGHT AND POWER

On December 13, 1985, MOA filed comments to the Commission's noticing of the proposed regulations. The utilities comments related to: (1) the applicability of the proposed regulations to other facilities such as conduits, utilidors, vaults, trenches, cells, towers, etc., (2) definitions for "occupied space" and "usable space", (3) signal interference problems, (4) filing of joint use contracts, (5) additional reimbursable costs not identified in the proposed regulations, (6) elements used in developing annual joint use rates, and (7) fiber optic conduit and other facilities inappropriate for joint use.

A. As part of its comments, MOA stated that the proposed regulations do not adequately address the joint use reimbursement methodology to apply to CATV's use of facilities that are not poles nor do the regulations define "occupied space" or "usable space".

The Commission tentatively determined that the proposed regulations apply to the joint use of facilities in addition to poles. Section 3 AAC 52.410(2) (now revised to 3 AAC 52.910(2)) provides that the reimbursement rate for the joint use of facilities be developed from the following formula: (CATV occupied space/ total usable space) * net investment * carrying charge ratio. In addition, Section 3 AAC 52.420(a) (now revised to 3 AAC 52.920(a)) states that the total usable space and the occupied space shall be determined from studies performed by the utilities. The regulations, in the case of pole attachments, define "usable space" (3 AAC 52.440(6) now revised to 3 AAC 52.940(6)) and, absent acceptable studies, establish the occupied space for CATV attachments and the total usable space to be used.

B. With regard to the other jointly used facilities (i.e. conduits, towers, etc.), the Commission believed that the formula is clear that total occupied space and usable space is to be used in determining the reimbursement rate. Since the total occupied space and usable space will vary based on the facility and the construction and safety codes, the Commission believed that those factors should be addressed on a case by case basis. Therefore, the Commission saw no reason to amend the proposed regulations.

C. MOA, in its response, stated that interference could occur on facilities owned by a third party or owned by one of the sharing parties. MOA, therefore, believed that the proposed regulations should include a provision to resolve disputes regarding interference.

The Commission indicated that the purpose of the proposed regulations is to establish a method for reasonable compensation

Attachment 1.

In its supplemental comments, ATU recommended the use of 16 feet for usable space for the Anchorage area rather than the 13.5 feet proposed in the regulations. ATU also objected to the proposed regulations insofar as they require it to jointly use its conduit with CATV. The proposed regulations (3 AAC 52.920) state that the usable space shall be determined from studies performed by the utilities. Staff believes that this provision addresses ATU's concern and that there is no justification to revise the regulations regarding usable space.

With regard to the joint use of conduits, the proposed regulations (3 AAC 52.900(b)) state that electric, telephone, and CATV utilities are encouraged to contract for joint use. It should also be noted that the purpose of the regulations is to establish a method for reasonable compensation for joint use where a CATV utility and another utility fail to agree on compensation for joint use of the other utility's poles and conduits. ATU's comment is addressed by AS 42.05.311, which in part states that a public utility having conduits, utilidors, poles, and pole lines shall, for reasonable compensation, permit another public utility to use them when the public convenience and necessity require this use and the use will not result in substantial injury to the owner or in substantial detriment to the service to the customers of the owner.

Conclusion

Based on the above and its review of the summary of the comments and discussion on Attachment 1, Staff believes that the regulations attached to Order No. 2 are reasonable and should be adopted as proposed.

for joint use where a CATV and another utility fail to agree on compensation for joint use of the other utilities poles and conduits. The Commission noted that the Federal Communications Commission (FCC) has established procedures (47 CFR 76) to resolve interference from CATV systems, and disputes regarding interference would properly be addressed before the FCC. Therefore, Commission saw no reason to revise the proposed regulations to address interference issues.

D. MOA stated that the proposed regulations are not clear with regard to section 3 AAC 48.390. MOA indicated that this could mean that a joint use contract is to be filed as a special contract. MOA pointed out that the proposed regulations state that the Commission will not assert its authority unless the utilities disagree on the terms of joint use of facilities. MOA believed that absent a conflict or complaint, there appears to be no need for the filing requirement.

The Commission stated that the proposed regulations require utilities to file the joint use contracts with the Commission and does not state that the filing is to be treated as a special contract. The purpose for filing the contracts is to allow the Commission and its Staff in reviewing pole rental revenues in future rate cases, monitor the development of pole attachment agreements, and monitor the methods of resolving pole attachment problems. Based on the above, the Commission did not believe the filing requirement to be oppressive and saw no reason to revise the proposed regulation regarding the filing of joint use contracts.

E. Also, in its response, MOA stated that it believed that the regulations were not clear as to whether the proposed regulations intended the non-recurring and make-ready charges to include subsequent costs incurred by an electric or telephone utility because of the physical attachment by the CATV. MOA suggests that section 3 AAC 52.410(1) (now 3 AAC 52.410(1)) be revised to specifically reference initial and subsequent costs.

The Commission noted that the costs of modifications or addition of facilities to accommodate joint use will include initial costs as well as subsequent costs. These costs will normally be a matter of negotiation, on a case by case bases, between the parties jointly using the facilities. The Commission believed that current wording in the proposed regulations clearly indicates that these costs will be reimbursed from a CATV utility to an electric or telephone utility for joint use. Therefore, the Commission did not propose to revise the wording to specifically reference initial and subsequent costs.

F. MOA stated that the proposed regulations, section 3 AAC 52.420(c) (now 3 AAC 52.920(c)), limits the components of the carrying charge ratio. MOA recommended that the regulation be revised to allow additional components where appropriate. The Commission believed that it is appropriate to revise the section to state that "... shall, at minimum, include the sum of the following." (this revision is included in the proposed

regulations in Appendix A of Order No. 2)

G. In addition MOA stated that the regulations should acknowledge that not all facilities can be shared without unacceptable risks to existing services and the safety of operating personnel. MOA requested the revision because it claimed that fiber optic cable is similar in appearance to CATV cable and could be misidentified and can be damaged in conduit shared with other users. MOA also requested the revision because conduit and vault space is limited and planned for a utilities growth and any use by other utilities would shorten the useful life of the conduit/vault investment.

The Commission stated that the purpose of the proposed regulations are to establish a method for reasonable compensation for joint use where a CATV and another utility fail to agree on compensation for joint use of facilities. AS 42.05.321 addresses the concerns of MOA in that the use or connection of facilities is not required if the use or connection will result in substantial injury to the owner utility or its customers, or in substantial detriment to the services furnished by the owner utility, or in the creation of safety hazards. Based on this the Commission saw no reason to revise the proposed regulations.

CITY AND BOROUGH OF SITKA (SITKA)

SITKA's response made no comments on the wording of the proposed regulations, however, it stated that it took exception to Order No. 1 in this proceeding stating that the Commission intended to apply the proposed regulations to exempt and partially exempt utilities. The Commission noted that AS 42.05.321(b) - Failure to Agree Upon Joint Use or Interconnection states "This section and AS 42.05.311 (Joint Use and Interconnection of Facilities) apply to all utilities whether or not they are exempt from other regulations under AS 42.05.711."

UNITED UTILITIES, INC.
UNIVISTA, INC.
MANLEY UTILITY COMPANY, INC.

United Utilities, Inc., UniVista, Inc., and Manley Utility Company, Inc. jointly filed their comments. The utilities stated that the regulations should specifically address: (1) the space allocated when a company owns and operates more than one utility, (2) the usable space when the average pole height is 35 feet or less, and (3) the situation when the CATV utility owns the poles. In addition, the utilities inquired as to who is responsible for bring the electric and telephone systems to minimum standards when the CATV utility plans to put up its own pole line.

The Commission believed the proposed regulations address the concerns expressed in items 1, 2, and 3 above. The regulations allow the utilities to perform studies to determine the usable space and occupied space. This provides for the consideration for factors that may be unique to a particular utility. In addition, there is nothing in the proposed regulations

prohibiting a CATV utility, who owns the poles, from applying the joint use reimbursement formula. The question regarding whose responsibility it is to bring systems into minimum standards (it is assume the National Electrical Safety Code (NESC)) is beyond the scope of this proceeding, however, the Commission pointed out that utilities shall correct all violations of the NESC as soon as reasonably possible.

HOMER ELECTRIC ASSOCIATION, INC.

Homer Electric Association, Inc. commented that the one foot occupied space for CATV pole attachments in section 420(a)(1) (now 920(a)(1)) should be revised to include the 40 inch NESC clearance requirement between the CATV cable and electric utility facilities. The Commission noted that Section 238 of the NESC allows utilities to use this space under certain circumstances. Electric utilities have used a portion the area for attachments of luminaire brackets for street lighting. Table 238-1 states that where noncurrent carrying parts of equipment are effectively grounded consistently through well-defined areas and where communication is at lower levels, clearances may be reduced to 30 inches. In addition, Table 238-2 provides that the clearance between effectively grounded brackets carrying the luminaires shall be at least 4 inches above messengers carrying communications cables. Based on the electric utilities being able to utilize the area, the Commission believed that it is not appropriate to assign the 40 inches as part of the CATV's occupied space.

CHUGACH ELECTRIC ASSOCIATION, INC. (CEA)

CEA suggested that (1) a third element should be added to Section 3 AAC 52.410 (now revised to 3 AAC 52.910) to include the annual costs for the inventorying of joint use facilities, billing and collection efforts, coordinating attachments, etc., (2) the regulations maintain the option to use actual data for determining usable space, (3) the definition of "Administrative Expense Ratio" be revised to be based on the ratio of distribution administrative expense to net distribution utility plant investment, (4) the time period in which the complaint regarding pole attachments are resolved should be shortened, and (5) the definition of "Gross Pole Investment" should exclude crossarms, anchors, etc.

The Commission pointed out that the costs referenced in item 1. of CEA's comments are recovered as part of the carrying charges used to calculate the annual rental rate. Item 2 above, does not request any revision to the proposed regulations.

With regard to item 3 of CEA's comments, the Commission noted that not all utilities follow the Commission's prescribed uniform systems of accounts and, as a result, the specific identification of costs as suggested by CEA may not be available from utilities that do not follow the uniform system of accounts. The Commission believed that the cost information referenced in the proposed regulations should be readily available from all

utilities and the use of those costs will provide reasonable results for reimbursement.

CEA, with regard to item 4, provided no information to support the shorting of the time period for the final resolution of a pole attachment complaint. The Commission noted that the time period specified in the proposed regulations is consistent to that use in the FCC's regulations regarding pole attachments.

In item 5, CEA suggested that the definition of "gross pole investment" (3 AAC 52.440 now revised to 3 AAC 52.940) in the proposed regulations be revised to include the investment of crossarms, guys, etc. The Commission believed that structures on the pole not used by the CATV utility should not be included in the attachment rates. Therefore, the Commission believed the definition in 3 AAC 52.440(3) (now revised to 3 AAC 52.940(3)) should be revised to reflect the investment of a bare pole. (the revision is included in Appendix A of Order No. 2)

MATANUSKA ELECTRIC ASSOCIATION, INC. (MEA)

MEA, in its comments, recommended that (1) the proposed 13.5 feet of usable space (3 AAC 52.420(a)(2) now revised to 3 AAC 52.920(a)(2)) should be revised to reflect the average specific to Alaska, (2) the regulations include the definition of pole height, pole length and the formula for computing average usable space. Item 1 has been previously discussed in the Commission's response to United Utilities, Inc.'s comments referenced above. With regard to item 2, the Commission believed that the definition of usable space is clear and no revision is needed to include the definitions and formula recommended by MEA.

THE CITY OF KETCHIKAN d/b/a KETCHIKAN PUBLIC UTILITIES (KPU)

KPU recommended that the proposed regulations be revised to: (1) exclude utilities exempt under AS 42.05.711(b), (2) delete the requirement for exempt utilities to filing joint use agreements, (3) delete the word "normally", (4) include in the definition "Tax Ratio" payments in lieu of taxes, (5) revise 3 AAC 52.420(c)(4) (now revised to 3 AAC 52.920(c)(4)) to include maintenance expense for poles owned by telephone utilities, (6) clarify 3 AAC 52.430 (now revised to 3 AAC 52.930) to show that answers to complaints are 20 days after receipt of the complaint, and (7) revise 3 AAC 52.440 (now revised to 3 AAC 52.940) to reflect accounting systems in addition to those referenced in 3 AAC 48.227.

Item 1, in KPU's comments, has previously been addressed by the Commission in its discussion of the City and Borough of Sitka's comments. Item 2 has previously been addressed in the Commission's discussion of MOA's comments.

In response to item 3, the Commission believed that the use of "normally" would prevent the regulations from being too restrictive.

The Commission believed that no change is require with regard to item 4 since the definition of "Tax Ratio" is sufficiently broad to include payment in lieu of taxes.

With regard to item 5 referenced above, the Commission noted that the definition of "maintenance expense" (3 AAC 52.440(4) now revised to 3 AAC 52.940(4)) in the proposed regulations includes maintenance expense of telephone utility poles.

KPU provided no supporting information for its suggested revision referenced in item 6. Revising the regulation to reflect an answer to a complaint "...after receipt of the complaint" will result in a indeterminate period. The Commission believed that the time period should be specific and also believed that 20 days is a reasonable period; therefore, the commission saw no legitimate reason to make the suggested revision.

In item 7, KPU points out that utilities exempt from Commission regulation may have systems of accounts that are different than those referenced in 3 AAC 48.277. The Commission believed that the proposed regulations should provide for the application of those accounting systems for determining joint use reimbursement. (the revision is included in Appendix A of Order No. 2) .

Register , 1988 COMMERCE AND ECONOMIC 3 AAC 52.900
DEVELOPMENT --- 3 AAC 52.910

3 AAC 52 is amended by adding new sections to read:

ARTICLE 5.
CABLE TELEVISION JOINT USE OF
ELECTRIC AND TELEPHONE UTILITY FACILITIES

Section

- 900. Application and purpose
- 910. Joint use reimbursement
- 920. Elements used in developing annual joint use rate
- 930. Procedure
- 940. Definitions

3 AAC 52.900. APPLICATION AND PURPOSE. (a) The provisions of 3 AAC 52.900 -- 3 AAC 52.940 apply to all electric, telephone, and cable television (CATV) utilities included in the definition of "public utility" in AS 42.05.720(4).

(b) The purpose of 3 AAC 52.900 -- 3 AAC 52.940 is to establish a method for reasonable compensation for joint use when a CATV and another utility fail to agree on compensation for joint use of the other utility's poles. A contract for joint use must be filed with the commission. Absent unusual circumstances, the commission will assert its authority over CATV joint use only when the utilities disagree on the terms of joint use or a joint use agreement or when the commission has reason to believe that the utilities are not acting in accordance with the intent of AS 42.05.
(Eff. / / , Register)

Authority: AS 42.05.151
AS 42.05.311
AS 42.05.321

3 AAC 52.910. JOINT USE REIMBURSEMENT. (a) The commission will require reimbursement from a CATV utility to an electric or telephone utility for joint use, comprised of two elements:

(1) the additional costs to the electric or telephone utility of modifications or additions necessitated by the joint use and

(2) an annual amount determined by multiplying the percentage of total usable space which is occupied by the CATV facilities times the total annual cost of the jointly used facilities.

(b) The formula for reimbursement under (a)(2) of this section is:

$$\text{Rate} = \frac{\text{CATV occupied space}}{\text{total usable space}} \times \frac{\text{net investment}}{\text{carrying charge ratio}}$$

The formula will be used to calculate a rate per pole, in which case the "net investment" is the electric or

Register , 1988 COMMERCE AND ECONOMIC 3 AAC 52.920
DEVELOPMENT 3 AAC 52.930

telephone utility's average net investment per pole.
(Eff. / / , Register)

Authority: AS 42.05.151
AS 42.05.311
AS 42.05.321

3 AAC 52.920. ELEMENTS USED IN DEVELOPING ANNUAL JOINT USE RATE. (a) The total usable space and the occupied space will be determined from studies performed by the utilities. Absent acceptable studies of actual usable and occupied space, the commission will apply the following presumptions:

- (1) the occupied space for CATV pole attachments is one foot and
 - (2) the total usable space on a pole is 13.5 feet.
- (b) The average investment per pole is determined by dividing the gross pole investment less the associated depreciation reserve by the number of poles.

(c) The carrying charge ratio includes the sum of the following:

- (1) the depreciation ratio which is calculated by multiplying the pole depreciation rate by the ratio of gross pole investment to net pole investment;
- (2) the tax ratio which is the ratio of actual taxes paid (except for income taxes) to total net utility plant investment;
- (3) the return on investment ratio which is the percentage rate of return authorized by the commission, including weighted cost of debt and equity, or the actual return on net plant allowed by a different ratesetting methodology, and a provision for income taxes, if applicable;
- (4) the maintenance ratio which is the ratio of annual maintenance expense for poles to the net pole investment. For electric utility-owned poles, the maintenance expense is determined by dividing the maintenance expense for overhead distribution lines by net plant investment of the associated overhead distribution lines; and
- (5) the administrative expense ratio which is the ratio of administrative expense to net utility plant investment. (Eff. / / , Register)

Authority: AS 42.05.151
AS 42.05.311
AS 42.05.321

3 AAC 52.930. PROCEDURE. If a CATV and an electric or telephone utility cannot reach agreement on a joint-use issue, including compensation, a complaint may be filed with the commission and served on the other party setting out the relevant facts and a prayer for relief. The other party may file an answer to the complaint within 20 days of service of that complaint. The commission will accord a priority to